



Introduction to the 50 State Survey Project:

With a series of 50-state surveys, Ballotpedia seeks to fill in gaps in the public understanding of how administrative agencies function at the state level. Much of administrative state scholarship focuses on the way federal agencies interact with the President of the United States, Congress, and the U.S. Supreme Court. Ballotpedia's survey results allow readers to see how state administrative agencies interact with governors, state legislatures, state courts, and the public at large.

Each of the 50 states has its own state-level Administrative Procedure Act and, of course, its own constitution. Many of these constitutions and statutes have stronger or weaker provisions empowering or reining in the administrative state at the state-level. Ballotpedia has surveyed state-level APAs and constitutions to show how the states stack up in each of the following five areas key to understanding the nature and scope of the administrative state:

- Delegation of legislative authority to other branches
- Executive control of administrative agencies
- Judicial deference to administrative agencies
- Due process and procedural rights
- Agency dynamics

Executive control of administrative agencies

The executive control of agencies is one of five pillars key to understanding the main areas of debate about the nature and scope of the administrative state. Executive control is primarily exercised through appointment and removal power—the authority of an executive to appoint and remove officials in the various branches of government.

Areas of scholarly debate explored in this area include an executive's regulatory review activities as well as an executive's authority to reorganize administrative agencies within the executive branch.

When examining the executive control of administrative agencies on the state level, we focused on the following four questions:

- How do states hold their administrative law judges accountable?
- How do states select their administrative law judges?
- Which states provide for executive removal power, and how do they do so?
- Which states have elected cabinet members?

Question 1: Organization of state administrative law judges

What We Did:

Ballotpedia surveyed all 50 state Administrative Procedure Acts and constitutions to learn whether Administrative Law Judges (ALJs) and other hearing officers were accountable to chief ALJs or were employees of agencies.

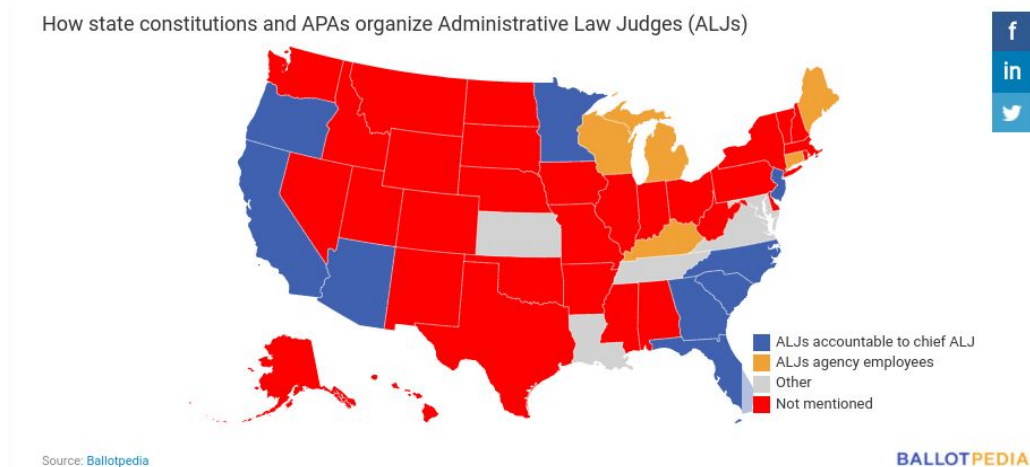
Why We Explored This:

A state ALJ or hearing officer oversees agency adjudication of contested cases. These officers resolve disputes and make sure the agency and those with business before the agency follow proper procedures. In theory, ALJs and hearing officers who are accountable to a chief ALJ will have more independence than those who are employees of the same agency for which they resolve contested cases.

Looking at how states organize their ALJs and other hearing officers provides insight into how executive control of agencies works at the state level. Executive control is one of the five pillars key to understanding the main areas of debate about the nature and scope of the administrative state.

Results:

Adjudication procedures varied from state to state. This survey noted the organization of any officer that presides over agency hearings. Most states call those officers ALJs or hearing officers, but the survey found and included states that called such officers hearing examiners, presiding officers, or other similar names.



31 states, 62%, did not specify in their constitutions or APAs whether their ALJs were accountable to a chief ALJ or were agency employees



Types of ALJ Accountability:

State(s):

ALJs accountable to chief ALJ

AZ, CA, FL, GA, MD, MN, NJ, NC, OR, SC

ALJs as employees of various state agencies

CT, KY, ME, MD, MI, WI

ALJs accountable to a state officer other than a chief ALJ

KS, LA, TN, VA

Allows agencies to hear their own cases or to delegate hearing authority to ALJs accountable to a chief ALJ or to a person not accountable to the chief ALJ

MD

Question 2: State hiring or appointment of administrative law judges

What We Did:

Ballotpedia surveyed all 50 state Administrative Procedure Acts and constitutions to learn whether Administrative Law Judges (ALJs) and other hearing officers were hired or appointed.

A state ALJ or hearing officer oversees agency adjudication of contested cases. These officers resolve disputes and make sure the agency and those with business before the agency follow proper procedures.

Adjudication procedures varied from state to state. This survey noted the hiring or appointment of any officer that presided over agency hearings. Most states called those officers ALJs or hearing officers, but the survey included states that called such officers hearing examiners, presiding officers, or other similar names.

Why We Explored This:

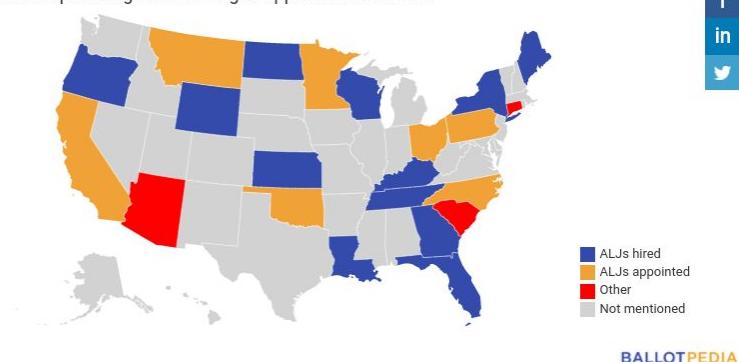
In theory, ALJs and officers who are hired will have more political independence than those who receive appointments from the governor or another political official.

Looking at state ALJs and other hearing officer selection provides insight into how executive control of agencies works at the state level. Executive control is one of the five pillars key to understanding the main areas of debate about the nature and scope of the administrative state.

Results:

According to the BP survey, more states hire ALJs and those who serve as hearing officers than appoint them.

Constitutions and APAs providing for the hiring or appointment of ALJs



ALJ Selection Process:

State(s):

Have APAs that provided for the hiring of ALJs or other hearing officers

FL, GA, KS, KY, LA, ME, NY, ND, OR, TN, WI, WY

Have APAs that provided for the appointment of ALJs or other hearing officers

CA, MN, MT, NC, OH, OK, PA

APA provides for the election of ALJs by the general assembly

SC

APA mentions ALJs as both appointed and hired officers

AZ

APA mentions that hearing officers are appointed but can also be employees of agencies

CT

State constitutions and APAs do not mention the hiring or appointment of ALJs or hearing officers

AL, AK, AR, CO, DE, HI, ID, IN, IA, MD, MA, MI, MS, MO, NE, NV, NH, NJ, NM, RI, SD, TX, UT, VT, VA, WA, WV

Question 3: State executive removal power over agency officials

What We Did:

Ballotpedia surveyed all 50 state Administrative Procedure Acts (APAs) and constitutions to see whether the states granted executive removal power over agency officials. The survey focused on whether states empowered governors to remove state agency officials like the president of the United States may remove federal agency officials.

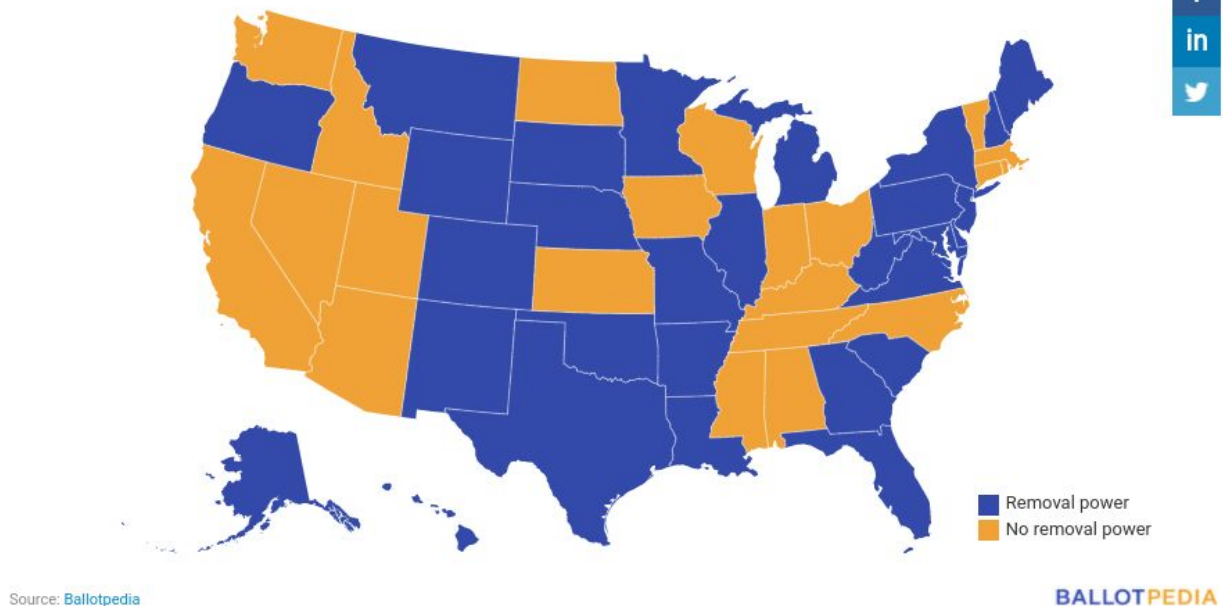
Why We Explored This:

Whether governors have the power to remove agency officials provides insight into how executive control of agencies works at the state level. Executive control is one of the five pillars key to understanding the main areas of debate about the nature and scope of the administrative state.

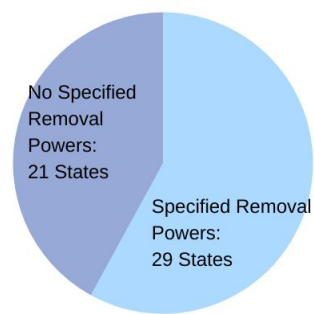
Results:

According to the survey, most state constitutions allow governors to remove agency officials. A plurality of those constitutions did not require governors to cite a particular cause before removing an official.

State APAs and constitutions that provide for executive removal power over agency officials



29 states, 58%, had constitutions or APAs granting executive removal power to the governor



Executive Removal Power Type (Constitution):

Give governors the power to remove agency officials without citing specific reasons

State(s):

AK, HI, LA, MD, MO, MT, NE, NJ, NM, NY, PA, SD, TX, VA

Require governors to cite specific causes before removing agency officials

AR, CO, DE, FL, IL, ME, MI, NH, OK, SC, WV, WY

Executive Removal Power Type (APA):

Grant the governor removal powers over certain officials

State(s):

GA, MI, MN, OR

Executive Removal Power not mentioned in state constitution or APA:

AL, AZ, CA, CT, ID, IN, IA, KS, KY, MA, MS, NV, NC, ND, OH, RI, TN, UT, VT, WA, WI

Question 4: States with elected cabinet members

What We Did:

Ballotpedia surveyed all 50 state Administrative Procedure Acts and constitutions to see which states provided for the election of cabinet members.

Executive branch structures varied from state to state, but this survey noted any elected official that had authority over a government department. In some cases, the constitution and APA did not mention all of the cabinet officials in a particular state. This page only contains the elected officials listed in those documents.

Why We Explored This:

Looking at how state officers are selected provides insight into how executive control of agencies works at the state level. Executive control is one of the five pillars key to understanding the main areas of debate about the nature and scope of the administrative state.

A state cabinet member is like a federal cabinet-level official. These state officials often include lieutenant governors, attorneys general, and secretaries of state and other similar officers. Most of these state officials are elected, but in some states the governor appoints them. The appointment power is a way governors can influence what happens inside state agencies. In theory, elected cabinet officials have more autonomy than those appointed by the governor.

Results:

According to the survey, most states, 92%, had elected cabinet members.

States that provide for elected cabinet members



Source: Ballotpedia

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Status of cabinet members:

Have constitutions that provided for the election of cabinet members

State constitutions and APAs do not provide for the election of cabinet members

State constitution says the state legislature elects the secretary of state and treasurer

State(s):

AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, ND, NM, NV, NH, NY, NC, OH, OK, OR, PA, RI, SC, SD, TX, UT, VA, VT, WA, WV, WI, WY

AK, HI, NJ, TN

ME